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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

United States of America,

Petitioner,

v.

Eugenii Glushchenko,

Respondent.

Case No. \_\_\_\_\_

**MOTION FOR EMERGENCY  
TEMPORARY ORDER TO PERFORM  
INVOLUNTARY MEDICAL  
EXAMINATIONS AND ADMINISTER  
INVOLUNTARY HYDRATION**

Petitioner United States of America requests an emergency temporary order permitting the Secretary of the Department of Homeland Security (DHS), through component agencies, Immigration and Customs Enforcement (ICE) and the Public Health Service, Division of Immigration Health Services Corps (IHSC), to perform involuntary medical examinations of Respondent Eugenii Glushchenko, to administer involuntary hydration to Mr. Glushchenko, and to restrain him if he resists those examination or hydration efforts. This motion is supported by the following memorandum of points and authorities, the attached exhibits, and all matters of record.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**FACTUAL BACKGROUND**

Eugenii Glushchenko, A- - - - - 460, is a 37-year-old male who is a native and

1 citizen of Russia. On April 16, 2019, an Immigration Judge ordered Mr. Glushchenko  
 2 removed from the United States to Russia. Mr. Glushchenko was not represented by  
 3 counsel during his removal proceedings. Upon information and belief, Mr. Glushchenko is  
 4 not currently represented by counsel. Mr. Glushchenko has been detained at the Eloy  
 5 Detention Center (EDC), since September 5, 2018, pending removal from the United  
 6 States. Decl. of Dale Welsh, PA-C, ¶ 5 (July 10, 2019)(Exhibit 1). ICE Enforcement and  
 7 Removal Operations (ERO) attempted to effect Mr. Glushchenko's removal order to  
 8 Russia on June 17, 2019, via commercial airliner. Mr. Glushchenko refused to board the  
 9 transport van to the airport and indicated he would refuse to board the commercial airliner  
 10 if taken to the airport. Decl. of Jason Ciliberti ¶¶ 3–6 (July 9, 2019)(Exhibit 2).

### 11 **Mr. Glushchenko's Hunger Strike**

12 On June 19, 2019, Mr. Glushchenko declared to ERO officers that he was going on  
 13 a hunger strike. Mr. Glushchenko's last meal was breakfast on June 19, 2019. Mr.  
 14 Glushchenko has missed 63 meals since eating his last meal. Mr. Glushchenko's refusal to  
 15 eat is based, alternatively, on not being hungry and on not eating until he is released from  
 16 detention. Decl. of William Crane, M.D., ¶¶ 5, 9; Ciliberti Decl. ¶¶ 7–8.

17 On the morning of June 23, 2019, IHSC medical personnel reported that Mr.  
 18 Glushchenko was refusing all efforts to assess his physical condition. On the evening of  
 19 June 26, 2019, Mr. Glushchenko was transported to the Banner Casa Grande Medical  
 20 Center (BCGMC) in Casa Grande, Arizona, to be evaluated for dehydration and low blood  
 21 pressure. Upon arriving at the BCGMC, Mr. Glushchenko accepted intravenous (IV)  
 22 hydration and a medical examination. Upon his discharge and return to the EDC on June  
 23 26, 2019, however, Mr. Glushchenko again refused all evaluation and treatment. Ciliberti  
 24 Decl. ¶¶ 9–11.

25 On July 2, 2019, Mr. Glushchenko was again transported to BCGMC for evaluation  
 26 for dehydration and hypernatremia (a deficit of total body water relative to total body  
 27 sodium caused by water intake being less than water losses). While at the hospital, Mr.  
 28 Glushchenko initially accepted IV fluids, but refused medications and a potassium

1 supplement. On July 4, 2019, Mr. Glushchenko was returned to the EDC. Since then, Mr.  
 2 Glushchenko has refused to allow medical staff to monitor his condition; he continues to  
 3 refuse water and food as well. Ciliberti Decl. ¶¶ 12-13.

4 On July 7, 2019, Mr. Glushchenko was transported to the Maricopa Medical Center  
 5 (MMC) for evaluation for dehydration and starvation. AT the MMC, Mr. Glushchenko  
 6 initially refused food, treatment, and IV hydration. MMC medical personnel began  
 7 administering Mr. Glushchenko saline via IV, but he began clinching his arm and asked  
 8 MMC personnel to remove the IV. Late in the evening on July 7, 2019, Mr. Glushchenko  
 9 finally allowed MMC staff to check his vitals and submitted to some testing. On July 8,  
 10 2019, while still at the MMC, Mr. Glushchenko accepted IV hydration, ate some ice chips,  
 11 and drank some apple juice. Mr. Glushchenko was discharged from the MMC on July 8,  
 12 2019, and returned to the EDC. Upon return to the EDC, Mr. Glushchenko reiterated his  
 13 intent to not comply with medical monitoring, receive medical treatment, or voluntarily  
 14 consume fluids or any type of nourishment. Welsh Decl. ¶ 8; Ciliberti Decl. ¶ 14.

15 Since Mr. Glushchenko ceased eating on June 19, 2019, both the medical staff and  
 16 the detention and removal staff have repeatedly tried to convince Mr. Glushchenko to eat.  
 17 The medical staff has explained to Mr. Glushchenko the medical necessity to eat and drink  
 18 to preserve his health as well as the medical risks incurred during a hunger strike. Mr.  
 19 Glushchenko continues to refuse to resume eating, stating that he will eat when he feels  
 20 hungry. Mr. Glushchenko has been counseled that if he continues to not hydrate or eat his  
 21 health will be seriously jeopardized, and he will eventually die. Mr. Glushchenko has also  
 22 been counseled that involuntary hydration procedures may be employed to prevent injury  
 23 and or death should he continue not to hydrate or eat. Welsh Decl. ¶¶ 10, 13; Ciliberti Decl.  
 24 ¶ 15.

### 25 **Medical Necessity**

26 Mr. Glushchenko has been on a self-imposed hunger strike since June 19, 2019. He  
 27 has been evaluated by the mental health team at the EDC in efforts to have him discontinue  
 28 his hunger strike. He does not have any known psychiatric condition that would cause him

1 not to eat. In addition to refusing meals, Mr. Glushchenko is also refusing medical  
2 examination, monitoring, and weight assessment. Welsh Decl. ¶¶ 5-8.

3 Because Mr. Glushchenko has refused to allow EDC medical staff to weigh him  
4 during his hunger strike, his last known weight at the EDC was 160 pounds on January 24,  
5 2019. Mr. Glushchenko's weight on June 26, 2019, taken at the Banner Casa Grande  
6 Emergency Department was 142 pounds. Mr. Glushchenko's last documented weight  
7 measurement, taken at the Maricopa Medical Center Emergency Department on July 8,  
8 2019, was 120 pounds. This indicates a 25% decline from baseline weight in January 2019.  
9 Welsh Decl. ¶ 6.

10 A weight loss of 18% below initial weight can result in serious medical problems,  
11 such as liver, kidney, and brain failure. In fact, medical literature reflects that metabolic  
12 imbalance caused by fasting is likely to result in permanent bodily damage and/or death  
13 once weight loss reaches 18% of the patient's initial weight. Dehydration greatly  
14 accelerates a progressive starvation because the waste that the body produces is not  
15 excreted. Welsh Decl. ¶ 12.

16 Medical staff and security personnel at EDC have observed Mr. Glushchenko  
17 drinking a negligible amount of fluids at EDC in 22 days. He did permit off-site medical  
18 staff to provide limited intervention in a hospital setting on June 26, 2019, July 2-4, 2019,  
19 and July 7-8, 2019, where he received intravenous fluids, a computed tomography (CT)  
20 scan of the spine, and laboratory work. At his July 7-8, 2019, hospital visit, he did eat ice  
21 chips and drink some apple juice, after receiving IV fluids, but declined further medical  
22 intervention against medical advice. Upon returning to the EDC on July 8, 2019, Mr.  
23 Glushchenko reiterated his intent to not comply with medical monitoring, receive medical  
24 treatment, or voluntarily consume fluids or any type of nourishment. Welsh Decl. ¶¶ 8-9.

25 Mr. Glushchenko is progressively becoming lethargic, lying in bed most of the time,  
26 since the beginning of his hunger strike. Due to the inability to assess his exact medical  
27 state, there is concern of Mr. Glushchenko going into kidney failure, liver failure, heart  
28 failure, and death. It is difficult to predict for how long the human body can survive without

1 food, and if an individual does not have adequate fat stored, this time decreases  
2 significantly. Between the 15th and 30th day of a hunger strike, a patient may suffer  
3 neurological symptoms severe enough to warrant hospitalization. Death by terminal total  
4 fasting occurs by acute depletion of thiamine, causing fatal arrhythmia and/or cardiac  
5 arrest. Welsh Decl. ¶¶ 9, 11-13.

6 Medical monitoring through vital signs, laboratory tests, weight checks, and  
7 physical examinations is critical to time-appropriate medical interventions. For a patient  
8 on a hunger strike, the following evaluations are necessary: laboratory test at least every  
9 48–72 hours; physical examination daily; urinalysis; daily weight checks; and frequent  
10 taking of vital signs. Welsh Decl. ¶¶ 14-15.

11 At this stage of the hunger strike, Mr. Glushchenko has reached a point where he  
12 will require immediate medical intervention to prevent further deterioration and serious  
13 medical complications. Continued fasting will result in permanent damage to internal  
14 organs and has the potential to become life threatening. If laboratory tests reveal other  
15 conditions requiring medical attention, it may be necessary to administer medications  
16 intravenously to address those other conditions. Welsh Decl. ¶ 14.

17 In light of all the circumstances above, it is medically necessary to perform medical  
18 examinations, vital signs checks, weight checks, laboratory testing as clinically indicated,  
19 and intravenous hydration to monitor Mr. Glushchenko's physical condition and ensure his  
20 health. Should Mr. Glushchenko refuse to cooperate with blood work and other necessary  
21 medical monitoring and testing, medical soft restraints may be required to immobilize him  
22 and prevent unnecessary injury to both Mr. Glushchenko and the medical staff. Welsh  
23 Decl. ¶¶ 16-17.

#### 24 **Effect on Security and Orderly Institutional Operations**

25 In light of all these circumstances above, in the professional opinion of Mr. Jason  
26 Ciliberti, the Assistant Field Office Director (AFOD) of the EDC, the death or permanent  
27 injury of Mr. Glushchenko from his hunger strike would seriously affect ICE's ability to  
28 provide for the health and safety of detainees at EDC in the following ways:

1           1.       Perceptions may be formed by the ICE detained population that ICE will  
2 simply let Mr. Glushchenko die, without intervening to save him, which could lead to acts  
3 of detainee violence and disruptions. The detained population, having formed such a  
4 perception, could act alone or in groups to disrupt the operation of EDC.

5           2.       Tensions between detainees and staff would be heightened, making almost  
6 all aspects of the detention operation more difficult for staff to perform.

7           3.       For a detainee to cause his own death without staff intervention would  
8 undermine DHS's obligation to render appropriate medical care and prevent detainee  
9 suicides.

10          4.       Other detainees may decide to commit suicide by starving themselves.

11          5.       Other detainees may decide that they have lost confidence in the medical  
12 staff at EDC to administer medical care. They may be reluctant to seek treatment from the  
13 medical staff, reluctant to accept the treatments recommended, and may decide there is a  
14 need to "second guess" the judgments of the medical staff. They may simply refrain from  
15 seeking treatment for their illnesses from the medical staff, leading to emergencies that  
16 could have been avoided had the detainee sought medical help at an earlier time.

17          6.       Detainees who participate in hunger strikes may severely and permanently  
18 damage their health, requiring DHS to expend large sums of money for their immediate  
19 and long-term medical care.

20          7.       Other detainees may participate in hunger strikes to attempt to manipulate  
21 the staff to gain various benefits and privileges.

22          8.       Some detainees will voice threats to go on a hunger strike, gaining additional  
23 staff attention, drawing staff attention away from other detainees.

24          9.       If a detainee is permitted to die from starvation, the community's perception  
25 of ICE and its staff will be adversely affected. Members of the community expect that DHS  
26 will use its best efforts to preserve the lives of detainees while enforcing the immigration  
27 laws of the United States.

28          10.       The failure to provide necessary medical care could expose the United States

1 and its employees to various claims of liability and lawsuits from family members of  
 2 deceased detainees who assert that DHS, through ICE, should have acted to forestall the  
 3 detainee's physical harm or death by involuntary medical treatment, which may include  
 4 medical monitoring, hydration and/or force-feeding the detainee. The burdens of  
 5 responding to administrative claims and lawsuits would result in a drain on staff time and  
 6 resources and distract staff from their regular duties of ensuring the safety of ICE detainees  
 7 at EDC. Ciliberti Decl. ¶ 17.

## 8 **ARGUMENT**

### 9 **A. Standards Governing Issuance of Temporary Restraining Order**

10 Pursuant to Federal Rule of Civil Procedure 65(b)(1), the Court may issue a  
 11 temporary restraining order without notice only if:

12 (A) specific facts in an affidavit or a verified complaint clearly show that  
 13 immediate and irreparable injury, loss, or damage will result to the movant before the  
 14 adverse party can be heard in opposition; and

15 (B) the movant's attorney certifies in writing any efforts made to give notice  
 16 and the reasons why it should not be required.

17 The purpose of a temporary restraining order is to "preserv[e] the *status quo* and  
 18 prevent[] irreparable harm just so long as is necessary to hold a hearing, and no longer."  
 19 *Reno Air Racing Assoc., Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006) (emphasis  
 20 added) (quoting *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 438-39 (1974)).  
 21 The standard for issuing a temporary restraining order is identical to the standard for  
 22 issuing a preliminary injunction. *Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240  
 23 F.3d 832, 839 n.7 (9th Cir. 2001). "A plaintiff seeking a preliminary injunction must  
 24 establish (1) that she is likely to succeed on the merits, (2) that she is likely to suffer  
 25 irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips  
 26 in her favor, and (4) that an injunction is in the public interest." *Winter v. Natural Res.*  
 27 *Def. Council, Inc.*, 555 U.S. 7, 20 (2008). A preliminary injunction cannot issue based on  
 28 speculation or possibility. *Id.* at 20–24.



**B. The United States Is Likely To Succeed On The Merits**

**1. The United States Has An Obligation to Prevent Harm to Mr. Glushchenko.**

Mr. Glushchenko has been detained at the EDC since September 5, 2018, pending removal from the United States. His detention is authorized by statute. *See* 8 U.S.C. § 1231(a)(2). The United States is responsible for his treatment and care while he is in custody and during the removal process. *DeShaney v. Winnebago Cnt’y Dep’t of Soc. Servs.*, 489 U.S. 189, 199–200 (1989); 8 U.S.C. § 1231(f); 8 C.F.R. § 241.2(a)(2).

**2. Mr. Glushchenko’s Constitutional Rights Are Not Violated By Involuntary Medical Examinations or Involuntary Hydration.**

Mr. Glushchenko’s constitutional rights are not violated by involuntary medical examinations or involuntary hydration. “[F]ederal courts must take cognizance of the valid constitutional claims of prison inmates.” *In re Soliman*, 134 F. Supp. 2d 1238, 1252 (N.D. Ala. 2001), *vacated as moot*, 296 F.3d 1237 (11th Cir. 2002) (quoting *Turner v. Safley*, 482 U.S. 78, 84 (1987)). Finding that the difficulties of prison administration warrant special consideration, the Supreme Court articulated a standard of review for prisoners’ constitutional claims “that is responsive both to the ‘policy of judicial restraint regarding prisoner complaints and [to] the need to protect constitutional rights.’” *Turner*, 482 U.S. at 85 (alteration in original) (quoting *Procunier v. Martinez*, 416 U.S. 396, 406 (1974)).

The proper standard for determining the validity of a prison regulation or procedure claimed to infringe on an inmate’s constitutional rights is to ask whether the regulation or procedure is “reasonably related to legitimate penological interests.” *Id.* at 89; *In re Soliman*, 134 F. Supp. 2d at 1252. The Supreme Court has identified four factors that serve to channel the reasonableness inquiry: (1) whether there is a “valid, rational connection” between the regulation and a legitimate governmental interest; (2) whether there are alternative means of exercising the asserted constitutional right; (3) whether and to what extent accommodation of the asserted right will have an impact on prison staff,



1 other inmates, and the allocation of resources; and (4) whether the regulation represents  
 2 an “exaggerated response” to prison concerns. *Turner*, 482 U.S. at 89-91; *see also Hakim*  
 3 *v. Hicks*, 223 F.3d 1244, 1247-48 (11th Cir. 2000), *cert. denied*, 121 S. Ct. 1382 (2001)  
 4 (applying *Turner* standard to free exercise of religion claim where prison officials refused  
 5 to recognize inmate’s religious name change); *O’Lone v. Estate of Shabazz*, 482 U.S. 342  
 6 (1987) (same). Under this standard, the requested involuntary medical examinations,  
 7 hydration, and restraints should be upheld against any claimed infringement upon First  
 8 and Fourteenth Amendment rights because the United States can easily establish that the  
 9 provision of life-saving medical care to hunger-striking detainees “bears a rational  
 10 relation to legitimate penological interests.” *Overton v. Bazzetta*, 539 U.S. 126, 132  
 11 (2003).

12 The majority of courts that have considered the issue have held that orders  
 13 authorizing involuntary medical examinations, restraints, and/or hydration do not violate  
 14 a hunger-striking prisoner’s constitutional rights. *See Aamer v. Obama*, 742 F.3d 1023,  
 15 1041, 1040 (D.C. Cir. 2014) (explaining that the “overwhelming majority of courts have  
 16 concluded . . . that absent exceptional circumstances prison officials may force-feed a  
 17 starving inmate actually facing the risk of death”) (listing cases); *In re Grand Jury*  
 18 *Subpoena John Doe*, 150 F.3d 170, 172 (2d Cir. 1998) (per curiam) (“In reviewing the  
 19 district court’s force-feeding order . . . we, like the majority of courts that have  
 20 considered the question, hold that such an order does not violate a hunger-striking  
 21 prisoner’s constitutional rights.”); *Martinez v. Turner*, 977 F.2d 421, 423 (8th Cir. 1992),  
 22 *cert. denied*, 507 U.S. 1009 (1993) (federal prisoner’s allegation of force feeding by  
 23 prison authorities did not state constitutional claim when attachments to pleadings  
 24 reflected a medical determination that force feeding was necessary to the inmate’s health,  
 25 and that regulations authorized the force feeding of hunger striking inmates); *In re*  
 26 *Sanchez*, 577 F. Supp. 7, 8 (S.D.N.Y. 1983) (rejecting hunger-striker’s constitutional  
 27 claims, stating that motive was to manipulate system to vacate her contempt order); *Bezio*  
 28 *v. Dorsey*, 989 N.E.2d 942, 949-50 (N.Y. 2013) (applying *Turner* test and upholding

1 order that authorized state prison officials to intervene to prevent hunger-striking  
 2 prisoner's death by feeding via nasogastric tube, if necessary); *McNabb v. Dep't of Corr.*,  
 3 180 P.3d 1257, 1265 (Wash. 2008) (determining that the State's interests in applying  
 4 Department of Corrections' force-feeding policy to inmate outweighed inmate's right to  
 5 refuse artificial means of nutrition and hydration).

6 Courts also have recognized that the significant government interests in prison and  
 7 inmate safety and security outweigh any liberty interests that an inmate may have in  
 8 refusing medical treatment. *See, e.g., Freeman v. Berge*, 441 F.3d 543, 546–47 (7th Cir.  
 9 2006), *cert. denied* 549 U.S. 824 (2006) (discussing why prisoners have reduced liberty  
 10 interests in refusing life-saving medical treatment and refusing to eat); *Davis v. Agosto*,  
 11 89 Fed. App'x 523, 528 (6th Cir. 2004) (forced suturing of an open wound against  
 12 inmate's will did not violate inmate's due process or Eighth Amendment rights); *Parks*  
 13 *v. McCoy*, 35 Fed. App'x 239, 241 (7th Cir. 2002) (inmate forced to take tuberculosis  
 14 medication against her will based on a misdiagnosis did not state a constitutional claim);  
 15 *In re Grand Jury Subpoena John Doe*, 150 F.3d at 172 (“Other compelling governing  
 16 interests, such as preservation of life, prevention of suicide, and enforcement of prison  
 17 security, order, and discipline outweigh the constitutional rights asserted by Doe in the  
 18 circumstances of this case.”); *Dumbrique v. Brunner*, No. 14-cv-02598, 2016 WL  
 19 3268875, at \*5 (N.D. Cal. June 15, 2016) (finding prisoner had no constitutional right to  
 20 refuse to eat nor a liberty interest in refusing to eat), *cf. Inmates of Allegheny County Jail*  
 21 *v. Pierce*, 612 F.2d 754, 762 (3d Cir. 1979) (stating that federal courts will “disallow any  
 22 attempt to second-guess the propriety of a particular course of treatment” chosen by  
 23 prison doctors); *Martinez v. Mancusi*, 443 F.2d 921, 924 (2d Cir. 1971) (“Obviously,  
 24 courts cannot go around second-guessing doctors.”); *Garza v. Carlson*, 877 F.2d 14 (8th  
 25 Cir. 1989) (holding that “preservation of prisoners’ health is certainly a legitimate  
 26 objective, and prison officials may take reasonable steps to accomplish their goal”).

27 Mr. Glushchenko's hunger strike and refusal of any medical monitoring or care is  
 28 making it impossible for the United States to fulfill its responsibility to provide adequate

1 treatment and care to him, and is risking his permanent health and possibly his life. *Id*;  
 2 *see also In re Abdel Fattah*, 2008 WL 2704541, at \*1 (M.D. Pa. July 8, 2008) (“The  
 3 evidence is that lack of water causes an imbalance in electrolytes and potassium. These  
 4 deficiencies can have a serious impact on the heart, kidneys and liver.”). It is necessary  
 5 for the United States to conduct essential medical monitoring of Mr. Glushchenko during  
 6 his hunger strike to assess whether his physical condition begins to deteriorate such that  
 7 his health and life are in imminent jeopardy of permanent injury.

8 **C. The United States Is Likely To Suffer Irreparable Harm Absent an**  
 9 **Emergency Order.**

10 The United States has legitimate governmental interests in preserving the lives of  
 11 individuals in its custody, maintaining security and orderly operations in its immigration  
 12 detention facilities, and avoiding burdensome and unnecessary litigation. There is a valid  
 13 rational connection between these government interests and the above-described  
 14 involuntary medical examinations, restraints, and administration of hydration to Mr.  
 15 Glushchenko.

16 The United States has a legitimate interest in providing potentially life-saving  
 17 medical monitoring and care to preserve the life and prevent suicidal acts of individuals  
 18 in its custody. It also has a statutory obligation and a constitutional duty under the Eight  
 19 Amendment to safeguard the lives of the individuals it detains. *See* 8 U.S.C. § 1231(f); 8  
 20 C.F.R. § 241.2(a)(2); *see generally DeShaney*, 489 U.S. at 199–200; *Estelle v. Gamble*,  
 21 429 U.S. 97, 102–05 (1976). As discussed above, courts have repeatedly recognized this  
 22 interest when upholding the involuntary hydration and feeding of prisoners and detainees.  
 23 Indeed, federal regulations governing management of inmates who engage in hunger  
 24 strikes “authorize medical officers to force-feed an inmate if they determine that the  
 25 inmate’s life or permanent health is in danger.” *Martinez v. Turner*, 977 F.2d 421, 423  
 26 (8th Cir. 1992); *see* 28 C.F.R. §§ 549.60–66 (2012).

27 The United States also has a legitimate interest in maintaining security and orderly  
 28 operations in its immigration detention facilities. An inmate hunger strike can have a

1 significant destabilizing impact on institutions. “If prisoners are allowed to kill  
2 themselves, prisons would find it even more difficult than they already do to maintain  
3 discipline, because of the effect of a suicide in agitating other prisoners.” *Freeman*, 441  
4 F.3d at 547; *see also Bezio*, 989 N.E.2d at 950–51 (“[T]here is virtually universal  
5 recognition among appellate courts that an inmate hunger strike can have a significant  
6 destabilizing impact on the institution.”) (collecting cases); *In re Soliman*, 134 F. Supp.  
7 2d at 1253; *In re Grand Jury John Doe*, 150 F.3d at 172.

8 Finally, the United States has a legitimate interest in avoiding unnecessary and  
9 burdensome litigation. “Prison officials who let prisoners starve to death would also  
10 expose themselves to lawsuits by prisoners’ estates. Reckless indifference to the risk of  
11 a prisoner’s committing suicide is a standard basis for a federal civil rights suit.”  
12 *Freeman*, 441 F.3d at 547; *see also Al-Zahrani v. Rodriguez*, 669 F.3d 315 (D.C. Cir.  
13 2012) (damages lawsuit against United States officials related to suicide of Guantanamo  
14 Bay detainees); *Baires v. United States*, No. 09-cv-5171, 2011 WL 1743224, at \*7 (N.D.  
15 Cal. May 6, 2011) (finding complaint stated claim for relief under the Federal Tort Claims  
16 Act for negligent medical care of immigration detainees). Even if such litigation is not  
17 successful, the burdens of responding to administrative claims and lawsuits would drain  
18 time and resources from many departments of the United States.

19 The likelihood of irreparable harm to the United States if Mr. Glushchenko is  
20 allowed to dehydrate or starve himself to death is substantial, as is the likelihood of  
21 irreparable physical and mental harm to Mr. Glushchenko. The United States cannot  
22 adequately care for Mr. Glushchenko while he continues to refuse medical monitoring,  
23 medical treatment, medication, and hydration. To prevent irreparable harm to both the  
24 United States and Mr. Glushchenko, the United States must be allowed to conduct  
25 essential medical monitoring of Mr. Glushchenko, and to administer hydration to Mr.  
26 Glushchenko, during his hunger strike. Essential medical monitoring includes  
27 involuntary blood draws and weight checks, insertion of urinary catheters, and routine  
28 medical examinations, as well as the use of medical soft restraints to immobilize Mr.

1 Glushchenko to prevent unnecessary injury to both Mr. Glushchenko and the medical  
 2 staff should Mr. Glushchenko refuse to cooperate with hydration efforts, blood work, or  
 3 other necessary medical monitoring and testing.

4 **D. The Balance of Equities Favors the Issuance of a Temporary Order for**  
 5 **Medical Examinations, Hydration, and Necessary Restraints.**

6 The public interest lies in preserving the health and safety of persons held in  
 7 United States custody, for whose welfare the public has assumed responsibility, in  
 8 avoiding the threat to the good order of the detention center and to the safety of other  
 9 detainees, and in avoiding burdensome and unnecessary litigation. All of these interests  
 10 would be damaged if Mr. Glushchenko is allowed to dehydrate or starve himself to death  
 11 without intervention. Given the potentially dire consequences if the motion is not granted,  
 12 the balance of harms and the public interest weigh substantially in favor of granting the  
 13 requested relief.

14 **CONCLUSION**

15 An emergency order is necessary to preserve the status quo and to prevent  
 16 irreparable harm to Mr. Glushchenko's life and health. Absent a temporary order  
 17 permitting the United States to perform involuntary medical examinations of Mr.  
 18 Glushchenko, to administer involuntary hydration to Mr. Glushchenko, and to restrain  
 19 him if he resists those examination or hydration efforts, Mr. Glushchenko may be  
 20 permanently injured or die.

21 The United States respectfully asks the Court to issue a temporary order permitting  
 22 the Secretary of DHS, through component agencies ICE and IHSC, to:

- 23 1. conduct involuntary blood draws and weight checks, insert urinary
- 24 catheters, and perform routine medical examinations on Mr. Glushchenko;
- 25 2. administer involuntary hydration to Mr. Glushchenko; and
- 26 3. restrain Mr. Glushchenko if he resists efforts to draw blood, be weighed,
- 27 have urinary catheters inserted, or have hydration administered.
- 28

1           The United States also requests that the Court set this matter for hearing as soon  
2 as practicable so that it can determine the rights of Mr. Glushchenko.

3           Respectfully submitted this 10th day of July, 2019.

4                           MICHAEL BAILEY  
5                           United States Attorney  
6                           District of Arizona

7                           s/ Bill C. Solomon  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 10, 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and mailed a copy of the foregoing First Class Mail addressed to the following CM/ECF non-registrants

**Eugenii Glushchenko** (Axxx xxx 460)  
Eloy Detention Center  
5501 N. La Palma Road  
Eloy, AZ 85131  
*Respondent*

*s/ Lauren M. Routen*  
United States Attorney's Office